

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

CHRISTINA BEAN)	
)	
Plaintiff,)	
)	
v.)	Case No. <u>CIV-21-777-HE</u>
)	State Case No. CJ-2021-141
UNITED OF OMAHA LIFE)	District Court of Garfield County
INSURANCE COMPANY,)	
)	
Defendant.)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, the Defendant, United of Omaha Life Insurance Company (“United”), hereby removes this action to the United States District Court for the Western District of Oklahoma. This action is removable because the claims asserted by the Plaintiff, Christina Bean (“Plaintiff”), arise under the United States Code, thereby providing this Court with federal question subject matter jurisdiction over this case. In support of this Notice of Removal, United offers the Court the following:

PROCEDURAL BACKGROUND

1. On July 2, 2021, Plaintiff filed a Petition in the District Court in and for Garfield County, State of Oklahoma, captioned *Christina Bean v. United of Omaha Life Insurance Company*, Case No. CJ-2021-141 (the “State Court Action”).

2. A copy of the Summons and Petition were thereafter served on United through the office of the Oklahoma Insurance Commissioner on or about July 9, 2021.

3. United has filed this Notice of Removal within the thirty-day period provided by 28 U.S.C. § 1446(b) and within one year of the commencement of the action as required by 28 U.S.C. § 1446(c)(1).

4. Pursuant to 28 U.S.C. § 1446(a) and LCvR 81.2, United has attached as exhibits to this Notice of Removal true and legible copies of all documents filed or served in the State Court Action: a copy of the Docket Sheet from the State Court Action is attached as **EXHIBIT 1**; a copy of the Petition is attached as **EXHIBIT 2**; a copy of the Summons served on United of Omaha is attached as **EXHIBIT 3**; a copy of United's Unopposed Motion for Leave to Answer Out of Time is attached as **EXHIBIT 4**; a copy of the Order Granting United's Unopposed Motion for Leave to Answer Out of Time is attached as **EXHIBIT 5**; and a copy of United's Answer is attached as **EXHIBIT 6**. At the time of filing this Notice of Removal, there have been no other filings or proceedings in the State Court Action except those attached as **EXHIBITS 1-6**.

5. In filing this Notice of Removal, United of Omaha does not waive any defense or counterclaim that may be available.

FEDERAL QUESTION JURISDICTION EXISTS

6. This action involves a federal question over which this Court has original jurisdiction under 28 U.S.C. § 1331, and which may be removed to this Court without regard to the citizenship of the parties under 28 U.S.C. § 1441, in that the Petition, on its face, asserts claims for benefits under, and claims relating to the administration of benefits under, an employee welfare benefit plan (the "Plan"), (*see* Petition, **EXHIBIT 2**, at ¶¶ 1, 6,

41-44), as defined in and governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* (“ERISA”). *See* 29 U.S.C. § 1002(1).

7. The Petition alleges that the action is brought under ERISA (*see* Petition, **EXHIBIT 2**, at ¶¶ 1, 6); that Plaintiff was covered by an employee welfare benefit plan administered by United (*see id.* at ¶¶ 1, 4, 8); that Plaintiff became disabled as defined by the Plan on or about March 5, 2019 (*see id.* at ¶ 16); that United denied her claim for disability benefits under the Plan and upheld this decision (*see id.* at ¶¶ 18, 23-24); and that Plaintiff has exhausted all administrative remedies (*see id.* at ¶ 25). Because the Petition asserts claims for benefits under, and claims that involve the administration of, an ERISA-governed plan—which falls within ERISA’s civil enforcement provision, 29 U.S.C. § 1132(a)—this cause raises a federal question and accordingly may be removed to this Court. *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987).

THIS REMOVAL IS TIMELY AND PROPER

8. This removal is timely under 28 U.S.C. § 1446(b) because it is filed within thirty (30) days after the Oklahoma Insurance Department was served with the Petition on July 9, 2021.

9. Removal to this Court is proper under 28 U.S.C. § 1441(a) because the District Court of Garfield County, State of Oklahoma, is located within this District. *See* 28 U.S.C. § 116(c).

10. Written notice of the filing of this Notice of Removal will be given promptly to Plaintiff, and a copy of the Notice of Removal will be filed with the Clerk of the District Court of Garfield County, State of Oklahoma, as provided by 28 U.S.C. § 1446(d).

CONCLUSION

11. This is a civil action over which this Court has original subject matter jurisdiction pursuant to the provisions of 28 U.S.C. § 1331. This action is one that may be removed to this Court by United pursuant to the provisions of 28 U.S.C. § 1441, in that it is a civil action involving a claim for benefits under, and claims that involve the administration of, an ERISA-governed employee welfare benefit plan.

12. Therefore, under the applicable provisions of 28 U.S.C. §§ 1331, 1441, and 1446, United has complied with all necessary requirements and is entitled to remove this action.

WHEREFORE, premises considered, the Defendant, United of Omaha Life Insurance Company, hereby removes this action to this Court and invokes this Court's jurisdiction.

Dated: August 6, 2021.

Respectfully submitted,

s/James Wesley S. Pebsworth

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ATTORNEYS FOR DEFENDANT,

UNITED OF OMAHA LIFE

INSURANCE COMPANY

CERTIFICATE OF SERVICE

This is to certify that on August 6, 2021, a true and correct copy of the above and foregoing document was mailed to the offices of:

Roy S. Dickinson, Esquire
1408 Winding Ridge Rd.
Norman, OK 73072

s/James Wesley S. Pebsworth

James Wesley S. Pebsworth